

UNITED STATES DISTRICT COURT
COMMONWEALTH OF MASSACHUSETTS

LORI ANN MORAN,
Plaintiff

05 CV 10033 NG

v.

ANDREW DIPASQUA, MICHAEL
SANBORN, WILLIAM F. GAY, III, and
the ONSET FIRE DISTRICT,
Defendants

C.A. No.

14 Rbc

RECEIPT # 61263
AMOUNT \$ 150
SUMMONS ISSUED 1/5
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY CLERK CLK. [signature]
DATE 1/4/05

NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §1441(a)

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS:

Petitioners, Andrew DiPasqua, Michael Sanborn, William F. Gay, III, and the Onset Fire District, respectfully petition this Court for removal of the above-entitled action to the United States District Court for the District of Massachusetts, Civil Section, from the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County, and for their Notice of Removal state as follows:

1. Andrew DiPasqua, Michael Sanborn, William F. Gay, III and the Onset Fire District, are named as defendants by the plaintiff, Lori Ann Moran, in a civil action filed in the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County, entitled Lori Ann Moran v. Andrew DisPasqua, Michael Sanborn, William F. Gay, III, and the Onset Fire District, Dracut, Civil Action No. 04-1452B. On December 20, 2004, the defendant, Andrew K. DiPasqua, was served with a Summons and a copy of plaintiff's original Complaint. See Summons attached hereto as Exhibit "A." The defendant has not yet answered the original Complaint,

nor has an appearance been filed on Defendants' behalf.

2. This is a suit of a wholly civil nature brought in a Massachusetts state court. The action is pending in Plymouth County, Massachusetts, and, accordingly, under 28 U.S.C. §§101 & 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal.
3. This is an action in which the plaintiff alleges, among other things, that the defendants, Andrew K. DiPasqua, Michael Sanborn, William F. Gay, III, and the Onset Fire District, violated plaintiff's rights to due process and equal protection under the Fourteenth Amendment to the U.S. Constitution.
4. Because this case involves federal constitutional issues and claims for relief under federal law, the District Court has original jurisdiction pursuant to 28 U.S.C. §1331.
5. The defendants are filing this Notice within thirty days of service of the Summons and original Complaint upon the defendant, Andrew K. DiPasqua, within thirty days of the date this case became removable, and within the time for filing this petition. See 28 U.S.C. §1446.
6. The defendants will file a Notice of Filing of this Notice of Removal and a copy of this Notice of Removal with the Clerk of the Superior Court of Massachusetts, County of Plymouth.
7. Pursuant to Local Rule 81.1(a), the petitioners shall request of the Clerk of the Superior Court of Massachusetts, County of Plymouth, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within thirty days after

the filing of this Notice of Removal.

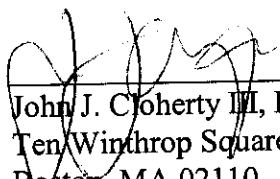
8. All defendants named in plaintiff's Complaint join in and consent to this Notice of Removal.

WHEREFORE, petitioners, Andrew DiPasqua, Michael Sanborn, William F. Gay, III, and the Onset Fire District, pray that the above action now pending in the Superior Court of the Commonwealth of Massachusetts in and for Plymouth County be removed from that Court to this United States District Court.

Respectfully submitted,

The Defendants,
ANDREW DIPASQUA, MICHAEL SANBORN,
WILLIAM F. GAY, III, and the ONSET FIRE
DISTRICT,
By their attorneys,


PIERCE, DAVIS & PERRITANO, LLP



John J. Cloherty III, BBO#566522
Ten Winthrop Square
Boston, MA 02110
(617) 350-0950

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon each attorney of record, or pro se litigant, by mail/by hand.

1/6/05 

Date

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Lori Ann Moran v. Andrew DiPasqua

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?

YES ☐ NO ☒

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)).

YES ☐ NO ☒

OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)).

YES ☐ NO ☒

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT?

YES ☐ NO ☒

(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE?

9. IN WHICH SECTION DO ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE?

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE

CENTRAL SECTION: YES ☐ NO ☐

OR WESTERN SECTION: YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John J. Cloherty III, Esq.

ADDRESS Pierce, Davis & Perritano, LLP, 10 Winthrop Sq., Boston, MA 02110

TELEPHONE NO. (617) 350-0950

(Category rev. - 3/97)

3 44
Rev. 12/96)**CIVIL COVER SHEET**

he JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Lori Ann Moran

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Andrew DiPasqua
Michael Sanborn
William F. Gay, III
Onset Fire District

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Plymouth
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Margaret A. Ishihara, Esq.
Fleming & Ishihara, P.C.
86 Church Street
Mattapoisett, MA 02739 508-758-6981

ATTORNEYS (IF KNOWN)

John J. Cloherty III, Esq.
Pierce, Davis & Perritano, LLP
10 Winthrop Square - 5th Floor
Boston, MA 02110 617-350-0950

BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---|---|
| Citizen of This State | <input checked="" type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 581 Agricultural Acts <input type="checkbox"/> 582 Economic Stabilization Act <input type="checkbox"/> 583 Environmental Matters <input type="checkbox"/> 584 Energy Allocation Act <input type="checkbox"/> 585 Freedom of Information Act <input type="checkbox"/> 590 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 595 Constitutionality of State Statutes <input type="checkbox"/> 600 Other Statutory Actions
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Due process and equal protection under the 14th Amendment to U.S. Constitution; Plaintiff alleges termination without due process and in violation of equal protection.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/06/05

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PLYMOUTH, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT OF THE
COMMONWEALTH

CIVIL ACTION NO. 04-1452B

(L.S.)

Lori Ann Moran, Plaintiff(s)

Andrew DiPasqua, Michael Sanborn,
William F. Gray, III, and
The Onset Fire District, Defendant(s)SUMMONS

To the above-named defendant: Andrew K. DiPasqua, 10 Wenonah Rd., Wareham, MA.

You are hereby summoned and required to serve upon Margaret A. Ishikawa, plaintiff's attorney, whose address is 26 Church St., Mattapa, MA 02739, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Plymouth the 11th day of December, in the year of our Lord Two thousand and four.

Ernest R. Francis
CLERK

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

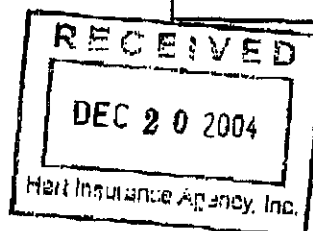
I hereby certify and return that on 12/20/2004, I served a copy of the within summons together with a copy with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4(d)(1-5)):

Dated: 12/20/2004

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

NOTED
11/28/04



12/20/04
A TRUE COPY ATTEST
DEPUTY SHERIFF

attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office at Plymouth.